Thus for the reasons stated above the appeal is therefore dismissed. In this case we feel that it is only fair that each party should bear its own costs. Therefore the appeal deposit should be refunded to the appellants.

Appeal dismissed.

Solicitors: *H.L. Tennakoon.*

DUNLOP INDUSTRIES EMPLOYEES UNION v. DUNLOP MALAYSIAN INDUSTRIES BHD. & ANOR.

[S.C. (Abdul Hamid C.J. (Malaya), Seah & Abdoolcader S.C.JJ.) January 21 & 24, 1987]

[Kuala Lumpur — Supreme Court Civil Appeal No. 481 of 1986]

Industrial Law — Powers of Industrial Court in hearing complaint of non-compliance with collective agreement — Failure to give reasonable advance notice of retrenchment of employees — Whether Industrial Court can order reinstatement — Application for certiorari to quash decision — Industrial Relations Act, 1967, ss. 17, 30A & 56.

Administrative Law — Application for certiorari to quash decision of Industrial Court — Powers of Industrial Court in hearing complaint of non-compliance with collective agreement — Failure to give reasonable notice of retrenchment of employees — Whether Industrial Court can order reinstatement — Industrial Relations Act, 1967, ss. 17, 30A & 56.

In this case the respondent employers and the appellant trade union had entered into a collective agreement which provided *inter alia* that the respondent will give such advance notice as it is reasonably possible to the appellant in writing of any redundancy or retrenchment but such notice shall not be less than two months prior to retrenchment. The respondent informed the appellant of the need to retrench some of its employees and issued the notices of retrenchment on the same day. The appellant protested and subsequently lodged a complaint with the Industrial Court of non-compliance of the collective agreement. The Industrial Court held that the appellant had made out its case and ordered the employees to be reinstated. The respondent then applied to the High Court for certiorari to quash the decision of the Industrial Court. The High Court holding that the Industrial Court had acted in excess of jurisdiction in ordering reinstatement when dealing with a complaint of non-compliance, quashed the award of the Industrial Court. The appellants appealed.

Held: it is abundantly clear that the Industrial Court could in the circumstances of the complaint of non-compliance in this case make the order that it did for the retrenched employees to be reinstated and this order was properly made in accordance with the provisions of section 56(2)(b) of the Industrial Relations Act, 1967, for the purpose of making proper rectification and restitution for a contravention of a term of the collective agreement. The order of the learned Judge of the High Court in quashing the award of the Industrial Court must therefore be set aside.

Case referred to:

(1) *Foo Loke Ying & Anor.* v. *Television Broadcasts Ltd. & Ors.* [1985] 2 M.L.J. 35, 43.

SUPREME COURT.

B. Lobo for the appellant.

C.V. Das (*R. Rajasingam* with him) for the respondent.

Cur. Adv. Vult.

Abdoolcader S.C.J. (delivering the Judgment of the Court): The crux of the case in the matter before us which is *res integra* concerns the semantic content and ambit of the functional application by the Industrial Court of the provisions of section 56, and more particularly subsection (2)(b) thereof, of the Industrial Relations Act, 1967 ('the Act') in considering a complaint of non-compliance with a provision for advance notice to a trade union under a collective agreement taken cognizance of by it prior to a retrenchment exercise implemented instanter in breach thereof and a *fait accompli* at the time of the complaint. This will involve and require a plain consideration of the terms of section 56 and other germane provisions of the Act, and to avoid tautology, all references to statutory provisions in this judgment relate to the Act. We would add that the Industrial Court was not a necessary party to have been joined as a second respondent to the application for certiorari and even less so as the second respondent in this appeal, and for the purposes of this judgment we will refer to Dunlop Malaysian Industries Berhad as the respondent.

The appellant and the respondent entered into a collective agreement in 1982 which was taken cognizance of by the Industrial Court in Cognizance No. 67 of 1983. The collective agreement is accordingly by virtue of section 17(1) binding on the parties and their integrants, and in accordance with the provisions of subsection (2) of section 17 it is an implied term of the contract between the respondent and its employees that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by

a subsequent agreement or a decision of the Industrial Court. Article 42 of the collective agreement deals with retrenchment, and paragraph (a) thereof provides that the respondent will give such advance notice as soon as it is reasonably possible to the appellant in writing of any redundancy or retrenchment but such notice shall not be less than two months prior to retrenchment. Paragraphs (b) to (e) of article 42 provide for the several matters on which any retrenchment exercise will have to be premised and for the entitlement of retrenched employees to specified benefits. Article 42(a) is clearly designed to facilitate mutual consultation and negotiation to avert retrenchment and would appear to be a corollary to give effect to the provisions of clauses 20 and 21 of the Code of Conduct for Industrial Harmony which the Industrial Court can take into consideration in making an award by virtue of section 30(5A).

The appellant received a letter at about 2.30 p.m. on June 24, 1986 from the respondent explaining the need to retrench some 114 of its employees who are members of the appellant due to a sharp decline in its business, and after a meeting between the parties, notices of retrenchment were issued at about 3.30 p.m. that very day to 112 employees. The appellant wrote to the respondent the next day protesting on the basis of a complaint of the breach of article 42(a) of the collective agreement and asking for the withdrawal of the letters to the appellant and the employees concerned. The respondent replied on June 27, reiterating its position and stating that the retrenched employees would receive two months' salary in lieu of notice in addition to retrenchment benefits and other accrued benefits including retirement gratuity. The appellant then on the same day lodged a complaint with the Industrial Court of non-compliance by the respondent with the provisions of article 42(a) of the collective agreement.

The Industrial Court heard the appellant's complaint of non-compliance and held in an award handed down on August 14, 1986 that the appellant had made out its case and accordingly under the provisions of section 56(2)(b) ordered that the 112 employees of the respondent purported to have been retrenched were to be reinstated without loss of seniority or of pay, subject to the conditions that (1) they were to report to the respondent for duty within one week of the date of the order, and (2) all moneys purported to have been paid for their retrenchment, if paid, were to be refunded to the respondent in full on the day they reported for duty. Pursuant to this award 56 employees were reinstated by restoring them on the payroll of the respondent but the 56 others failed to comply with the second condition imposed in the award as they were unable to refund the retrenchment payments they had received.

The respondent then, after obtaining leave therefor, applied to the High Court for certiorari to quash the award of the Industrial Court which Harun Hashim J. did on October 29, 1986. The case presented for the respondent was basically to the effect that the question of non-compliance with article 42(a) related to a retrenchment exercise and accordingly gave rise to a trade dispute and should have been dealt with as such under the Act and not as a case of non-compliance with a term of the collective agreement between the parties, while that for the appellant was that this was a clear case of non-compliance with a term of the collective agreement to justify a complaint to the Industrial Court under section 56 and an order for relief under the provisions of subsection (2) thereof. The learned Judge has not given any written judgment on the reasons for quashing the award but indicated when recording his order in his notebook his finding that the Industrial Court had acted in excess of jurisdiction by ordering reinstatement when dealing with a complaint under section 56, the failure to give notice under article 42(a) was procedural and insufficient to attract the application of section 56(2)(b) by way of restitution and the matter of retrenchment involved a question of non-employment and therefore clearly gave rise to a trade dispute which was to be resolved by conciliation and if necessary by reference to the Industrial Court under section 26.

For the purposes of considering the proper approach for the determination of the issue presented before us in relation to the requisite provisions of the Act in this appeal against the order made by the High Court, we can do no better than refer to and adopt this passage in the judgment of this court in *Foo Loke Ying & Anor.* v. *Television Broadcasts Ltd. & Ors.*[1]:

> "We should perhaps reiterate that the starting point in statutory interpretation is to consider the ordinary meaning of the word or phrase in question, that is its proper and most known signification. Some three months ago Lord Scarman in delivering the leading judgment of the House of Lords in *South West Water Authority* v. *Rumble's* [1985] 1 A.C. 609 said (at page 619):
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> '... the language of the two paragraphs consists of ordinary English words which possess by their very im-

precision the flexibility which is the hallmark of the English language, and which is one of the reasons for the survival of English as a living and worldwide tongue. I have no doubt that it would be contrary to the legislative purpose of the enactment to restrict or refine their breadth and flexibility in the context of this legislation, which has to cover a wide range of circumstances and situations present and future. A restrictive interpretation of the legislature's language would defeat the broad purpose of this innovative and reforming statute.'

We are of the view that the provisions of the Act under consideration before us call for a purposive and literal construction which is one which follows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose and applies where the literal meaning is clear and reflects the purposes of the enactment ..... The provisions of the Act are abundantly clear to refute any resort to a purposive and strained construction which requires a strained meaning where the literal meaning is not in accordance with the legislative purpose. In *Reg.* v. *Broadcasting Complaints Commission, Ex parte Owen* [1985] 1 Q.B. 1153 (at page 1174), it was held that the converse is not correct, namely, that it is legitimate to adopt a purposive construction so as to prevent the application of a statute to a situation which on its purely literal construction it would apply. This is what we think the appellants are seeking to persuade the court to do."

The respondent does not dispute the fact that there has been a breach of the provisions of clause 42(a) of the collective agreement. In this regard, two essential considerations assume vital significance. First, the appellant is not challenging the right of the respondent to retrench its employees but is only complaining of its failure to give the requisite advance notice provided for in clause 42(a). If the complaint were of the breach of the provisions of any of the other paragraphs of clause 42 of the collective agreement or if any dispute were to arise as to their implementation or application, the position would be entirely different as then there would clearly be a trade dispute within the connotation thereof in the definition of that term in section 2 since they relate to principles affecting redundancy or retrenchment as such. And second, the advance notice in relation to any redundancy or retrenchment under paragraph (a) of clause 42 is to be given to the appellant as the trade union of employees and a party to the collective agreement. As we have pointed out earlier, the purpose of the advance notice under clause 42(a) must surely be to give time and make way for mutual consultation and negotiation in line with the provisions of the Code of Conduct for Industrial Harmony so as to obviate and abort any imminent trade dispute as a result.

The complaint of non-compliance with an award or collective agreement taken cognizance of is made under section 56(1) and the Industrial Court can then give the relief specified in subsection (2) of that section. In regard to the matter before us where retrenchment was implemented as an accomplished fact but carried out in breach of the provisions of article 42(a) of the collective agreement for advance notice to the appellant of not less than two months prior to the retrenchment, it is manifestly obvious that the only provision in section 56(2) which can apply in such circumstances is paragraph (b) thereof which empowers the Industrial Court to 'make such order as it deems fit to make proper rectification or restitution for any contravention of any term of such award or collective agreement.' Section 56 must be read, construed and understood in the light of section 52(2) which prescribes that the provisions of the Act relating to trade dispute other than section 26(2) and section 30(4) shall apply to any matter referred to or brought to the notice of the Industrial Court under the Act. It accordingly follows that in dealing with a complaint of non-compliance under section 56 the Industrial Court has all the powers with which it is invested in relation to trade disputes other than the two excepted provisions of the Act specified in section 52(2). The provisions of section 30(5) and (6) will also therefore equally apply in considering a complaint under section 56.

Against the backdrop and in the context of the several provisions of the Act we have referred to and discussed, it is abundantly clear that the Industrial Court could in the circumstances of the complaint of non-compliance which is the subject matter of this appeal make the order that it did for the retrenched employees to be reinstated, and this order was properly made in accordance with the provisions of section 56(2)(b) for the purposes of making proper rectification and restitution for a contravention of a term of the collective agreement. It is in our view both an exercise of the power of rectification as well as restitution – rectification (that is to say, correction, putting right and making good) of the situation that had developed as a result of the contravention of clause 42(a) by the respondent and restitution in restoring the *status quo ante* as a *terminus a quo* to lay open the way to the respondent to re-institute a retrenchment exercise if it is so minded but this time in compliance with the provisions of clause 42 of the collective agreement. We would think that any other construction would emasculate and render impotent and otiose the provisions of section 56 in circumstances such as those before us.

Mr. Das for the respondent, however, contends that any such construction would be to give a power to the Industrial Court not intended or envisaged by the Act. We think that, perhaps understandably, he contends to this effect as he cannot do otherwise in the light of his submission that non-compliance with article 42(a) in the event gave rise to a trade dispute connected with the matter of employment or non-employment of workmen within the definition thereof in section 2. When however we asked him, if indeed he was correct in his contention, what manner of relief section 56(2)(b) would then encompass, he submits that it must necessarily refer to monetary compensation – a point not taken in the court below and raised before us for the first time. We must wholly dissent, as, descending to mundane reality from the ethereal heights of hypothesis and speculation, this argument cannot actually withstand even casual scrutiny.

We must reiterate once again that the advance notice under article 42(a) of the collective agreement is required to be given to the appellant and not to the individual employees affected. The retrenched employees would get their requisite salary in lieu of notice in addition to retrenchment benefits and other accrued benefits including pro-rata bonus and retirement gratuity. If then restitution in section 56(2)(b) is to mean compensation in terms of money, it must mean compensation to the appellant as the trade union and not to its individual members who are affected by the exercise. How then is this compensation to be assessed and quantified and what is the measure of damages? How would any monetary award compensate the appellant for the deprivation of the opportunity of consultation and negotiation on behalf of its members prior to the implementation of retrenchment envisaged by the Code of Conduct for Industrial Harmony? And how would any compensation to the appellant as a trade union in any event, even if ascertainable, benefit its members affected as a result of the breach of the provision for advance notice to their trade union? These questions have only to be posed to manifest the imponderables involved, and merely raising these queries and hypothesizing on the answers, or rather the lack of any effective or rational ones, would suffice to evince *ex visceribus* the intrinsic inanity of the very suggestion of monetary compensation in the circumstances of this case. We would add that, if indeed restitution in section 56(2)(b) can in fact mean compensation in the circumstances of the matter before us as contended for the respondent, the upshot at the very least would be to open the door to abuse in spawning and countenancing an unbridled licence for legalised breach of one or more terms of a collective agreement in such circumstances with virtual impunity and only on the sanction of a minimal imposition grossly incommensurate with the benefits the employer would reap by virtue of non-compliance therewith.

We are accordingly of the firm view that the provisions of sections 56(2)(b) and 52(2) clearly empowered the Industrial Court to make the award it did in dealing with the complaint of the appellant of non-compliance by the respondent with the provisions of article 42(a) of the collective agreement. Our conclusion is wholly in consonance with the principle that differences and disputes in industrial relations *ex necessitate rei* requires to be determined and disposed of as expeditiously as possible – a prescriptive postulate statutorily endorsed and affirmed in section 30(3). Section 56 was clearly enacted to effectuate this requirement and end, as otherwise recourse would have to be had to a reactivation *ab initio* and repetition of the whole tedious exercise of the conciliation and consequential process under section 26 by reference to the Industrial Court once again for resolving a trade dispute in a clear and uncontroverted case of mere non-compliance with a term of an award or collective agreement taken cognizance of by the Industrial Court.

In the event and for the reasons we have adumbrated, at the end of the day after hearing argument we allowed this appeal with costs here and below and set aside the order of the learned Judge which of course means that the respondent's application for certiorari to quash the award of the Industrial Court made on August 14, 1986 stands dismissed. The deposit lodged in court by way of security will be paid out to the appellant.

Order accordingly.

Solicitors: *Lobo & Associates; Shook Lin & Bok.*